

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

GEORGE FREDERICK DELANEY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 7:08cv465
)	
ROBERT MARSH, M.D.,)	
CAROLYN MACLAM, RN,)	
DANIEL BRAXTON and)	
FRED SCHILLINGS)	
)	
Defendants)	

MOTION TO DISMISS OF DEFENDANT CAROLYN MACLAM, RN

COMES NOW your defendant Carolyn Maclam, RN (“Nurse Maclam”), by counsel, and pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure moves this Court to dismiss the action against her filed by plaintiff *pro se* George Frederick Delaney (“Inmate Delaney”), and in support of her motion respectfully represents as follows:

1. Inmate Delaney states no cause of action or claim against Nurse Maclam.
2. Nurse Maclam has no authority to establish or authorize an inmate’s diet or to make or alter diet restrictions of any inmate, including Inmate Delaney.
3. Nurse Maclam is entitled to the protection of qualified immunity because as a nurse for the Virginia Department of Corrections she exercises discretion when rendering medical aid to inmates.
4. Inmate Delaney does not allege facts which could overcome Nurse Maclam’s qualified immunity. “Bare allegations of malice” are insufficient to overcome a qualified immunity defense. Crawford-El v. Britton, 523 U.S. 574.

5. Inmate Delaney has not plead facts which constitute a violation of his Constitutional rights.

6. Nurse Maclam is entitled to sovereign immunity for the state claims of negligence and medical malpractice.

7. Inmate Delaney's state law claims are barred by the doctrine of contributory negligence.

WHEREFORE, Carolyn Maclam, RN, by counsel, respectfully requests this honorable Court dismiss the action against her, with prejudice.

CAROLYN MACLAM, RN

By /s/ Erin W. Hapgood

Erin W. Hapgood

VS#67917

Attorney for Defendant Carolyn Maclam RN

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CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of May, 2009, electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

Richard C. Vorhis, Esq.
Office of Attorney General
900 East Main Street
Richmond, VA 23219
Email: rvorhis@oag.state.va.us
Counsel for Defendants Daniel Braxton and Fred Schilling;

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant:

George Fredrick Delaney
#374390
Powhatan Correctional Center
3600 Woods Way
State Farm, VA 23160

By /s/ Erin W. Hapgood